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Message of the Governor of Idaho

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*Message of Governor James H. Hawley to the
Eleventh Legislature of the State of Idaho.*

January 3, 1911

BIENNIAL MESSAGE

Of the Governor of Idaho to the Eleventh State Legislature

To the Senate and House of Representatives:

But a few hours have elapsed since you, as members of the Legislative Assembly, and I, as Governor, have assumed the duties of our respective offices, and upon our future actions as such officers depend the welfare and prosperity of the State for the ensuing two years, and these actions will greatly influence the affairs of the State for many years to come. New as I am, and as many of you are, to the public matters we are called upon to manage, it is proper we should approach the discharge of our duties with due consideration as to our ability to solve the problems that will present themselves, and with the high resolve to act wholly in the interests of the entire State without regard to personal or political considerations, and without permitting our interest in any particular county or section of the State to interfere with the higher duty we owe to the State at large.

Intimately associated as we will be during the next sixty days in matters pertaining to legislation, and with a joint responsibility for whatever is done during the session of the legislature, we are necessarily compelled to lean upon each other for support and to heartily cooperate in all matters pertaining to the public welfare.

Section eight of article four of the constitution makes it my duty at the commencement of the session to give you information as to the condition of the State and to recommend to you such measures as I deem expedient, also to present to you estimates of the amount of money required to be raised by taxation for all purposes of the State.

The reports of the various departments of the State have only been presented during the past few days. My examination of some of these reports has been of an extremely cursory character, therefore I will be compelled upon some of the matters to which it is my duty to call your attention to do so, in a

general way, with the expectancy of making further suggestions after more carefully digesting them.

To all who have given attention to legislative matters it is well known that the earlier weeks of a session are devoted to the consideration of matters of minor importance, and the serious work of the Legislature is deferred until the closing days of the session. This is wrong in principle and often gives rise to hasty and improvident legislation. Appreciating this condition, I shall endeavor to call to your attention thus early in the session a number of matters that suggest themselves to me as deserving your serious consideration, and thus enable you, if these suggestions are thought worthy of your notice, to give them your earnest attention at the earliest possible moment.

Realizing that the question of appointments to official positions vested in me by the constitution and the statutes of the State may tend in some degree to distract your attention from other duties, as applicants for these positions always endeavor to enlist the sympathies of members of the Legislature in the advocacy of their claims, I have considered it my duty to remove this source of distraction by immediately suggesting the names of those selected by me, and these names will be submitted to the Senate tomorrow for action by that body.

Celebration of Completion of the Panama Canal.

That which for half a century has seemed the idle dream of mere enthusiasts will soon become an accomplished fact. The most stupendous enterprise ever conceived by man is nearing completion, and in the year 1913 the Panama Canal will be opened to commerce. The entire world will be benefitted by this great work, and nothing ever attempted by our general government will so reflect credit upon us as a nation as our successful completion of this vast undertaking. While peculiar benefits will accrue to all sections of the United States by reason of the two oceans being united by this water-way, we of the Pacific slope will receive far more than our share of such attending advantages. The proper celebration of the completion of this enterprise will probably take the form of a great international exposition. Various cities are making preparation shall be had. San Francisco, the metropolis of the mother state of the Pacific coast, possesses peculiar advantages for the appropriate celebration of this great event, and not

only as a matter of sentiment should we add our influence to the selection of this city for that purpose, but we should urge it as a matter of substantial interest to our people. I suggest that a memorial be prepared setting forth the feeling of the people of the State in this regard, and that by proper resolution our Senators in the National Congress be directed, and our member of the House of Representatives be requested to present such memorial, and use their utmost endeavors in behalf of the selection of San Francisco for this great distinction.

Our State Constitution.

The defects, omissions, contradictions and absurdities of our State Constitution, have since its adoption, been a continual source of regret to our citizens and doubt to the legal profession. The fundamental law should in terse language express the basic principles upon which the State government is strenuous efforts for selection as the place in which such celebrated, and seldom require the intervention of the courts to make it understandable

"A thing of shreds and patches," of attempts to compromise divergent views of its makers, it is notable as an effort to legislate upon some matters and of entire neglect to even mention others equally important. Much time has been used in our courts in interpreting its provisions, and at each recurring general election our citizens are called upon to vote on various amendments. While it perhaps sufficed in the earlier years of statehood, it is no longer adapted to this growing State

A constitutional convention must be called in the near future. I do not recommend action to be taken at this session, but believe it proper to call the attention of our people to this subject, so that future action can be carefully considered beforehand.

New Counties

The State at the present time is divided into twenty-three counties. These vary greatly in area as they do in population and resources. Experience has shown that the best and most economical administration of county affairs is possible only in small, compact counties where the people have common interests and the population is homogeneous. There must be a great future increase in the number of counties of southern

Idaho, watered by the Snake river and its tributaries, which contains an immense area of irrigable land that is now being rapidly settled in many localities, while in other places years will elapse before it is fully improved. Until our great irrigation systems are brought to a successful completion, and our irrigable lands have a permanent population, it will become impossible to definitely ascertain the centers of population or the proper boundaries of new counties to be created. In my judgment, it will be for the best interests of the people of this entire section to patiently wait a few years longer until the conditions are such that the permanent boundaries of proposed new counties can be ascertained and fixed, even if by so doing slight hardships are sustained by some of them. I can see no other way of avoiding serious troubles and disputes in the future and preventing complications that will necessarily arise in the premature adjustment of county boundaries than to wait until such time as I have indicated, and then create all the necessary new counties that will be required. From the present outlook, this could be done in four years, possibly in two. Such action cannot properly be taken up and such boundaries permanently arranged at the present time, and I am absolutely and unequivocally opposed to any measures tending to fix the boundaries of new counties in this particular district, unless conditions should be proven to exist that are not contemplated by me. In suggesting in advance my ideas upon this important matter, I do not wish to be understood as opposing the division of any county in the State where it is apparent such division would be to the interest of all sections of that county and would not work hardships upon any of its citizens, and where there is a unanimity of sentiment upon the matter, and the boundaries of other counties will not be infringed upon, nor would I desire to be understood as opposing the temporary addition to any county of a section of another county where there was a unanimity of sentiment on the part of the people of both such counties in favor of such change, and where the interests of the people of the transferred section would be subserved by such action. While I have applied the above remarks in the main to the Snake River Valley in the southern part of the State, they will also apply in modified form to the northern part of the State.

Increase in Membership of the Legislature.

Under Section 2 of Article 3 of the Constitution the membership in the Senate is limited to 24 and the House to 60. Although not so required in the Constitution, the Legislature has heretofore wisely given each county one Senator. This course should, in my judgment, be made mandatory; this would necessitate an amendment increasing and limiting the number of Senators to one for each county now or hereafter to be organized. Such amendment should also permit the number of members of the House of Representatives to be increased as it becomes necessary, but not to exceed some certain stated number, or a multiple of the number of Senators

Revenue and Finance.

The revenue law should be revised from the Constitution up. The present system of taxation can never be satisfactorily applied or worked out. The assessment of property for the maintenance of the general government is condemned by every economic authority and has been abandoned in every civilized country, excepting the United States, and by several of the most progressive states of this country. The attempt to fairly adjust the valuations between the counties through the medium of a State Board, acting only upon the abstracts of those valuations, can never be successful. State taxes should be directly assessed by the State Tax Commission and should, as far as possible, be realized from special sources, such as inheritance incomes, transfers, securities, corporation franchise tax, gross earnings of public service corporations and the like. Property taxes based upon valuations could then be left largely to the cities and counties and could be assessed freely and without regard as to what is being done in other cities and counties. As a preliminary to the revision of the revenue article of our constitution and our revenue statutes, I recommend the authorization of the appointment of a Revenue Law Commission, whose duty it shall be to investigate sources of revenue, the tax systems of the different states and report to the next Legislature. The Commission should be given an appropriation sufficient to enable it to employ a clerical force and the necessary expenses of the commissioners while traveling in the State in the discharge of their duties. Whether there shall be a

salary or a per diem compensation, or, whether the commission should serve without compensation, is a matter to be left to legislative discretion, but, if compensation is provided for, it should be very moderate and commissioners should be found who would perform the service for the public good rather than for any consideration personal to themselves.

In connection with the revision of the revenue law, the bonding power of the State should be curtailed with a view to its ultimate abolition. We are too new a State today to get along on a cash basis, but as our institutions become better provided for we can gradually dispense with our bonding power instead of continually increasing it. If property were assessed, as it is intended to be, at its cash value, the present bonding limit would be over \$6,000,000, and there would be an unavoidable tendency to bond to the limit. As valuations increase, indebtedness would increase, and, instead of ever getting out of debt, we would be continually falling deeper into it. An absolute limit of \$2,000,000, exclusive, in the language of the present limitation, of Capitol Building Bonds and Territorial Indebtedness, up to 1920 or 1925, and thence on a decrease in the availing limit of \$100,000 a year, would enable us to build up our institutions and yet continuously decrease our indebtedness in proportion to the assessed valuation, and gradually get on to a cash basis. When that time arrives the annual income will be sufficient to continue substantial improvements without incurring debts.

The report of the State Treasurer, herewith presented, and to which I invite your careful attention, shows our present bonded indebtedness aggregates the sum of \$1,397,250, which is dangerously near the constitutional limit.

Fixed Provisions for the State's Institutions.

Under the system now in vogue, our state educational institutions depend in their entirety, except where the government has granted certain amounts for maintenance purposes, upon the appropriations made at the sessions of the State Legislature. This applies not only to the maintenance of these institutions, but to the betterments which are required to enable them to give more effective service. There is always a feeling of uncertainty on the part of the controlling boards of these institutions with reference to the amount that the Legislature

will appropriate both for the purpose of maintenance and of betterment, and, as a necessary consequence, each recurring session of the Legislature witnesses the demoralizing spectacle of managers and members of the governing boards of these institutions hastening to the capital and transforming themselves into insistent lobbyists for the purpose of inducing the legislature to grant the asked-for appropriations, each separate board having in view only the betterment of the particular institution with which they are officially connected, overlooking the needs of the other educational institutions of the State and seeking only for the advancement of the one they represent. As an almost necessary consequence, members of the Legislature from the counties wherein such institutions are located, as well as citizens of such counties not officially connected with the institutions, become impressed with the particular needs of the particular institution within their own county boundary, and use their best endeavors to secure the largest possible appropriations for such institution. It likewise necessarily follows that, under conditions such as this, in view of our common human nature, combinations are formed amongst the friends of the different institutions for the purpose of obtaining what each deems the necessary amount of moneys of the State, and such combinations are often far-reaching and enter into the consideration of other matters before the Legislature.

These evils are not of recent origin but have prevailed to greater or less extent for many years past and I apprehend will continue to prevail unless some remedy is provided which will cause this intolerable condition of affairs to cease.

I have studied long upon this subject and discussed it with many others interested in the matter, and concluded that the only way this ever present evil can be remedied is by providing a fixed tax for the support of these institutions so that their maintenance will be provided for without legislative intervention. This fixed tax would be for maintenance charges only and not include the erection of buildings, purchase of needed lands or other betterments; these would have to be provided for by special appropriations made by the Legislature, or perhaps from the fund raised by the taxes levied for the support of these institutions and appropriated therefrom for such purpose by a board of control.

The rate of taxation for this purpose could be fixed by the Legislature for a given number of years, after due considera-

tion as to probable increase in the assessment roll of the State, and also of the growing interests of these institutions; or, better still, within certain defined limits, to fix the tax rate for each year for such purposes. Action of this nature would rid the State of the evils that have afflicted us in connection with these institutions, would give a feeling of security upon the part of those in control of them, would tend to greater efficiency, and, above all, would remove each of them from the exigencies of politics.

A grave constitutional question is raised in my mind by the consideration of this matter, and the subject is so important, in my judgment, that I do not feel justified in imposing upon you my ideas as to the constitutionality of such enactment, although section one of article ten of the constitution seemingly covers it. It is a subject requiring the most careful thought and thorough investigation, and would, in all probability, compel a judicial interpretation by our Supreme Court before it would be safe to finally act. I recommend that upon this important subject the Legislature take action through its proper committees and cause a thorough investigation of the matter to be had in the office of the Attorney General, and, if necessary, cause the matter to be submitted by him to the Supreme Court of the State for adjudication.

Annual Meeting of Assessors.

Until some improvement is made in our method of assessing and collecting taxes, an annual meeting of the Assessors of the several counties would tend to secure more uniformity in valuation than otherwise would be possible, and in accordance with this idea, I will call for such a meeting during the present month and thus enable the Legislature to have the benefit of the Assessors' suggestions.

State Purchasing Agent.

The many educational, penal and reformatory institutions under the control, management and maintenance of the State, involve the purchase of large quantities of supplies each year. The penitentiary, the two insane asylums, the industrial school and deaf and blind asylum compel the greater amount of these purchases, but the various educational institutions also cut a considerable figure. Besides these purely State institutions,

there are supplies of various kinds required by the State in connection with the several State offices in the capitol building. The affairs of the State should, as near as possible, be conducted upon a strictly business basis and should be assimilated to the business management of great corporations or large firms. In no branch of private business conducted upon an extensive scale, is the indiscriminate purchase by individual officials or members allowed, and the tendency of modern business affairs has been, as a matter of economy and good management, to place the power of purchasing in a particular person. The immense business of the State requires, in my judgment, the application of this sound business principle to its affairs. As it is, each managing board expends the appropriations granted by the Legislature for the various necessities of such institutions, in its own way, dealing with such persons as such board deems fit, and paying such prices as in the judgment of the board are proper. We are confronted by a financial condition which is becoming intensified each succeeding year, that requires us to use the greatest economy in all branches of the government consistent with the welfare of the State. If a saving could be made in the cost of supplies of any given institution, the State would thereby be enabled to make a proportionately greater appropriation for the betterment of such institution, and the same amount of money now expended would result in far greater good.

Under the provisions of Section 18, Article 4 of the Constitution, the Governor, Secretary of State and Attorney General are made a board of examiners, with power to examine all claims against the State, except salaries or compensations of officers fixed by law, and perform such other duties as may be prescribed by law. As I view the matter, the board of examiners could be granted power to act as a purchasing bureau under this provision of the Constitution. Such power, however, would not be an effective means of curing the existing and ever-increasing evil. One man should be selected as the purchasing agent of the State, and no other officer or agent of the State should have authority to purchase for the use of the State, or upon the State's credit, except in instances where the purchasing agent deemed it advisable to buy certain material locally and so authorized local officials. This, of course, would include perishable articles produced in the particular locality.

The remarks with reference to the saving that might be effected by the purchase of articles needed by the state institutions applies equally to such articles as are used by the various state officers and in the different departments of the state government. Under the system that I am attempting to outline, at some fixed time, once or twice a year, or oftener if need be, each department and institution of the state should be required to render to the purchasing board a complete estimate of its requirements for the coming term, and these different estimates should then be grouped and classified and the articles bought by the purchasing agent wherever the best prices could be obtained for the quality desired, giving preference wherever possible to Idaho dealers, jobbers and manufacturers. Such purchases having been made, the purchasing agent should certify to each department or institution in duplicate the articles, quantity, quality and price, bought for it, one copy of this certificate to be returned to the purchasing agent, indicating thereon that the goods were received as bought and authorizing the price to be charged against the appropriation made for that purpose. This would enable the state to pay the bill as a whole, after which segregation could be made of the items according to the department or institution receiving the goods, and the proper amounts charged against the appropriations for that department or institution.

While it would, in my judgment, be the best policy to appoint a non-partisan purchasing board, serving without compensation, and composed of business men of known integrity and proven ability, whose duty it would be to select the purchasing agent and supervise his actions and accounts, and thus relieve the state officers of a portion of their onerous duties, still, under the provisions of the constitution heretofore cited, it might be impossible to legally appoint such board, because it might interfere with the duties imposed by the constitution upon the board of examiners. I would, therefore, recommend that the legislature give its prompt and earnest attention to the appointment of a purchasing agent for the state, acting under the supervision and general control of the board of examiners of the state.

The time you can devote to the consideration of this

suggestion is so brief, and the obstacles to be overcome in giving effect to the idea are so grave, you may find it necessary to postpone definite action until the next session, but, if in accord with the proposition, I urge you to at least initiate the enactment of such a law by appointing a committee whose duty it will be during the next two years to inquire into the following subjects, and report to the next session of the legislature, namely:

First. The entire annual purchases for all state departments and institutions.

Second. A proper classification of these purchases as a whole, showing cost and other material information.

Third. Information as to what the same articles could be purchased for if bought by one man in bulk at one time.

And that the committee should be required to submit conclusions upon the following subjects as a part of their report:

First. The annual saving that could be made.

Second. The expense entailed by the creation of the office of purchasing agent and the cost of a bureau of purchases, if it was thought best to establish such bureau, and the increased expenses, if it was thought best to constitute the state board of examiners, as the supervising authority over such purchasing agent.

Third. To outline a practical plan for placing the purchases of the state on the basis indicated and for organizing such work so as to obtain the greatest efficiency.

There necessarily would be entailed some expense by reason of such a committee being appointed, as their duties would probably require certain traveling to be done by them, and certainly would necessitate correspondence and keeping of minutes, drawing reports, etc., thus requiring a clerk or stenographer. The total expense, however, could not reasonably exceed the sum of \$2,000, and I believe that a better investment of this amount of money could not be made. I commend the ideas enunciated to your earnest and careful consideration.

Immediate Consideration of Necessary Appropriations.

No matter what action may be taken with reference to the method of raising funds in the future for our educational and other institutions, it is apparent provision must

be made for the maintenance of such institutions and also for the necessary betterments appurtenant to each of them. The consideration of these questions involves considerable time and necessitates careful examination and diligent inquiry. While these matters are pending before the Legislature other public business is in a great degree subservient to them, and the attention of the members of the two houses is apt to be concentrated upon them. If, in view of these self-evident facts, you agree with me that it would be the part of wisdom to proceed at once to the consideration of the matter, I will gladly do all in my power to aid you in this work by laying before the proper committees all data that I have collected, and assist in every possible way.

Joint Committee on State Institutions.

The needs of the public institutions of the State are many and varied and every Legislature experiences difficulty in adequately supplying the demands of all, and properly apportioning the various funds among them. This condition is unavoidable, but the result is deplorable and I repeat frequently leads to an effort on the part of the friends of the institutions to enter into combinations which affect general legislation and distinct parts of the state government. There is also engendered a rivalry among the institutions which is not productive of the best spirit or results. To obviate this condition, I recommend that the Senate and House appoint a joint committee on all State institutions, whose duty it shall be to investigate the various institutions at the opening of the session, and report not later than the second or third week the result of its investigations, together with its recommendations. In this manner there would be a single report from one committee instead of reports from separate committees on each of the institutions, and the report would be harmonious and embody the whole subject. If the exigencies of time demand, the committee might divide itself into two sub-committees, one on the educational institutions and the other on penal, charitable and reformatory institutions, but it should unite for the purpose of the report. This report should be speedily acted upon and appropriations, both general and by way of bond issues made as early in the session as circumstances permit.

The reports of the managing boards of each of these

institutions will be before you and will assist you in coming to a proper conclusion in regard to necessary appropriations. Large amounts will be asked for improvements, many of which are necessary, but good judgment must be used in the appropriations made, as the State's financial condition will not permit extravagant expenditures, and a niggardly course would seriously impair their present and future usefulness.

Land Office Matters

The State has title to a large area of public lands vested in it under grants made by the general government for various purposes. Lands have been selected under these grants in various counties. The system was adopted and for a time enforced under which large areas of contiguous lands were selected, and this has given rise in some places, notably in Fremont county, to considerable hardship upon the people of the county. Much of this land, especially in the county named, is arable and fit for the purpose of dry farming. A great grain producing section is being developed that does not require the use of water and it bids fair to rival the noted wheat belt of the Palouse country. Much of the State land in that vicinity is included in these grain lands. Heretofore, under a system of leasing, these lands have been devoted to grazing purposes. I believe this is bad policy so far as the best interests of the State are concerned. The amount of school lands that can be sold in any given year is limited by the Constitution, but the lands should be sold up to this limit. The question as to whether a greater price can be obtained for such lands in the future by their being held by the State, does not appeal to me as the best business policy. It is better for the State to dispose of these lands to actual settlers and thus increase our population and assessable property, than it is to wait and perhaps in the course of the next decade obtain double the amount that we could sell them for now.

I would further suggest in this regard that preference should be given in the leasing of arable lands, to those who propose cultivating and improving them. The best interests of the State require this should be done. I commend the matter to your careful consideration.

Carey Act Lands.

The general government has during the past few years

appropriated three million acres of the public lands in this state to be segregated by the state officers, under the provisions of what is generally known as the Carey act. Five-sixths of these lands have already been segregated. The supervision of the irrigation projects under the Carey act has entailed for a number of years a great deal of work upon, and taken up much of the time of the members of the state land board. My distinguished predecessor two years ago suggested the creation of a Carey Act commission, into whose hands the management of those enterprises so far as the state is concerned should be given. The legislature did not see fit to create this commission, and whatever may have been said in its favor then hardly applies at the present time, because most of these projects are under way to a greater or less extent, and the state land board has taken jurisdiction of them, and they should be carried to completion under the direction of that board. There are many matters in connection with the management of these projects by the board that should be carefully considered, and the proper committees of the two houses of the legislature should give such matters their close attention. We should bear in mind, in dealing with these projects, that there are two classes whose rights demand our most careful attention. These are the settlers who, under the auspices of the state, have been invited upon these lands and made their purchases thereof from the state, and the men who have furnished the money and by buying bonds of the promoting companies thus made the completion of these projects possible. Our future prosperity and the fair name of the state both require particular protection of these classes. While, in my judgment, it is not advisable to create a Carey Act Commission at this time, and while the creation of such a commission would be of doubtful constitutionality, unless it was simply made an adjunct to the state land board, and while the land board can successfully attend to the administrative supervision of Carey act enterprises, nevertheless the problems that must confront the state engineer are of such momentous importance, alike to the settlers, operating companies and the state, that their solution should not be entrusted solely to the judgment of one man. The promoters of these great projects employ the most compe-

tent engineers, men thoroughly versed in their profession, and it is not to be expected that our state engineer, with so many varied duties, can devote the careful attention to any one of them that their importance requires. It should be made possible by statutory enactment for the state land board to call to their assistance and that of the state engineer, whenever absolutely necessary, a board of advisory or consulting engineers; whose duty it should be to examine the particular projects with reference to which they were appointed, and make full investigation and due report thereof. This has been done to a certain extent heretofore by the land board, under the presumption that they had the power so to do in the absence of any statutory enactment. This means of determining the advisability of projects, the method of their construction, and similar matters, should be extended, and I urge should be warranted by express provisions of law. It can be managed without entailing any appropriation by the state and the expenses should be paid from Carey act funds.

I suggest further that in enacting a statute upon these matters there should be an express provision incorporated that no acceptance of any project could be made until the board had made personal inspection, also had the report of the state engineer, and whenever necessary of the advisory board of engineers, as to its completion under the terms of the contract. I would also suggest that no modification of any contract entered into between the board and promoters of these projects should be made until after proper notice had been given to all settlers or other persons interested in the matter.

Penalty for Officers Becoming Interested in Carey Act Projects.

There is doubt as to the sufficiency of our laws to properly reach and punish officers violating their duty with reference to Carey Act lands. In any event the provisions of law relating thereto are widely scattered throughout our codes and are ambiguous in their terms. I recommend the enactment of a law making it a felony for any member of the land board, or any employe or appointee thereof, to become interested, either directly or indirectly, in any Carey Act lands or any contracts with the State relating

to Carey Act projects then under the jurisdiction of the land board.

Land Board Investigations.

In view of the repeated charges of mal-administration of various Carey Act enterprises by the state land board, I suggest that a joint committee be appointed to thoroughly investigate and fully inquire into the charges made, and to report upon the action necessary to be taken to promote the cause of justice and the interests of the state.

Amendment of Laws Regulating Appropriation and Use of Water.

The laws with reference to the use of water should be amended in several particulars. The second foot has been made the unit of measurement under our system. This is a satisfactory method of determining the flow of streams, and at the time it was made the necessity for storing waters had not arisen. Now, however, many reservoirs are being constructed for storage purposes and a new unit of measurement should be adopted for strictly flood or stored waters, which unit should be, in my judgment, the acre foot.

House Bill 197, passed at the last session of the Legislature, for the protection of the rights of those conserving public waters, should be amended so as to define more clearly the powers of special deputies appointed by the state engineer to take charge of the special storage waters from the reservoir wherein contained to the divers ditches of the persons having the right to the use of such waters. The powers of these deputies should be made clear and understandable, and this would do much toward the prevention of interference with such deputies in the discharge of their duties.

Section 2882 of the Revised Codes provides a method of compulsory installation of measuring devices and head gates, so as to enable the water commissioner and his assistants to properly distribute waters under their control. The procedure under this section is so cumbersome as to render the statute almost useless. I recommend that it be so amended as to give the water commissioner authority to shut off the

delivery of water to any consumer who refuses to put in the proper head gate or measuring device after having been given a reasonable time in which to comply with an order to that effect by the water commissioner.

Under Section 3247 of the Revised Codes, the appropriator may change the place of diversion where others are not disadvantaged by such change. Our permit law should be amended so as to establish a method whereby such change can be made a matter of record in the State Engineer's office.

In a communication dated December 20, 1910, the State Engineer has made many valuable suggestions in reference to matters connected with our water laws. I submit a copy of this communication to you so that the matter may be referred to the proper committee, as many of these suggestions are entitled to consideration at your hands.

Duty of Water Investigations.

During the year 1910 investigations were conducted by an agreement made between the state board of land commissioners and the department of agriculture in regard to the duty of water. You will be furnished with the report of these investigations and I think will agree with me that they have been of great benefit to the State and should be continued in the future. Under the agreement mentioned, which can probably be extended, the State and Government pay an equal amount of the cost of this investigation. The arrangement in my judgment is equally beneficial to both, and will be of untold value for reference purposes in the future.

Forest Fires.

Forest fires were more destructive in Idaho as well as in the adjoining states during the summer of 1910, than in any previous year, and the loss amounted to a vast sum. The timber lands burned over belonged to the general government, to this state and to various individuals and companies. Upon much of the land burned over the timber was killed but not entirely destroyed, and this killed timber can be saved if it can be manufactured or put into water within two years. Some of the timber is near enough to lakes in the northern part of the State, and streams running into such lakes, to be placed in water and held until manufactured. In some other

places this timber is near enough to the railways to be reached in that way. Much of this timber, however, is so removed from waterways and railroads that it will be difficult to save it. I am informed by reliable persons residing in Nez Perce county that a large quantity of the killed timber belonging to the State and others is situated on the North Fork of the Clearwater and its tributaries. In order to save this timber it will be necessary to dam the streams and make ponds to hold it. Our laws as they now exist require that all dams in the streams shall be so constructed as to allow timber in rafts to pass. As I am informed, the North Fork of the Clearwater is not a practical rafting stream. If this is true the requests that have been urged upon me, and probably upon many of you, that the present law be so changed as to permit the construction of dams in that stream and its tributaries, and thus save this killed timber, would be of material benefit to that portion of the State. I would recommend thorough investigation upon your part of this matter, and if the facts are as above stated, then it would be advisable to amend the law accordingly.

Good Roads.

Our public roads are, outside of a few peculiarly favored sections, a disgrace to the State, and to the counties wherein situated. Our present road law is antiquated and ineffective. Nothing appeals to the intending resident so forcibly as good roads in the locality wherein he proposes to make his future home. There is no good reason why Idaho should lag behind the rest of the country in this regard. The greatest benefit of a good road system inures to the farmer, but all other classes are greatly assisted by it. This subject has attracted the attention of many of our people and Good Roads associations have been organized in several of the counties. Proposed statutes on this subject have been prepared by interested citizens and will undoubtedly be submitted to you. Hoping you will be able to devise a proper system that will cure this evil and put us in line with the other advanced states of the Union, I assure you of my hearty co-operation in the matter.

The Irreducible School Fund.

Section 3 of Article 9 of the Constitution provides: "The public school fund of the State shall forever remain inviolate

and intact. The interest thereon only shall be expended in the maintenance of the schools of the state, and shall be distributed among the several counties and school districts of the State in such a manner as may be provided by law. No part of this fund, principal or interest, shall ever be transferred to any other fund or used or appropriated except as herein provided. The State Treasurer shall be custodian of this fund and the same shall be securely and profitably invested as may be by law directed. The State shall supply all losses thereof that may in any manner occur."

The public school fund mentioned consists of the proceeds of school lands granted to the State by the general government and from grants made for general educational purposes, escheated estates, and unclaimed shares in dividends in corporations incorporated under the laws of the State, and grants made to the State for educational purposes.

It is further provided by Section 11 of this Article that this fund shall be loaned on first mortgages on improved farm lands within the State, and in State, United States and school district bonds and state warrants under such regulations as the legislature provides, and it is expressly declared that no loans shall be made in any amount exceeding one-third of the market value of the lands upon which the loan is made, at the time of the loan, exclusive of the buildings upon said lands

It undoubtedly was contemplated by the framers of the Constitution that the value of the lands upon which it was proposed to loan this school money would be fixed by the assessment roll of the county wherein situated, but as the law with reference to the assessment of property has been continuously and uniformly violated since the adoption of the Constitution by the officers whose duty it is to make such assessments, the valuation stated in the assessment roll has not been considered a fair one, and the state land board has heretofore adopted a method of appraising such land through an officer of that department. This, to my mind, is an obnoxious system which should not be further tolerated, and if it becomes necessary in the future to make appraisements of property upon which a loan is contemplated, its value should not be left to any particular officer of the land department, but the assessment of experts conversant with the values of property in the particular locality should be had, at the expense of the applicant.

It is the duty of the state land board, whenever there is a surplus of money in the school fund, to properly invest it. Under the system heretofore adopted, losses will necessarily occur at times. Not only is it our duty to make it impossible for such losses to continue in the future, but action should be taken to enable us to definitely ascertain the total amount of such losses sustained to the present time; and as it is the duty of the State under the constitutional provisions mentioned to reimburse the school fund by making up all losses sustained by reason of loans, the amount of such losses should be determined as soon as practicable and proper provision made to comply with this provision of the Constitution. I respectfully suggest the appointment of a committee of your honorable bodies to investigate the matter of such losses, with power to employ expert accountants to assist the committee in this labor. The scope of the investigation to be conducted should be broad enough to include all matters connected with the loan of the state funds and if the limited time included in the session of the Legislature will not permit such investigation to be completed, such committee should be empowered to continue such investigations until the facts have been fully ascertained, and submit their report to the next legislature.

The section of the Constitution limiting the amount to be loaned on land to one-third of its actual value is a wise provision, intended as an absolute and permanent safeguard of the school fund, and I suggest that you by proper enactment provide for a system of assessing land values upon which loans are to be made that would safeguard the interests of the State, as many loans have been made during the past decade in which there has been an absolute non-compliance with the provisions of the Constitution. As to the value of the property upon which loans were so made, it would be advisable, in my judgment, for the committee named, if appointed, to include such matter within the scope of their investigations.

Our Higher Educational Institutions.

Nothing so marks the advance in civilization of any community as the attention paid to educational matters by its citizens, and this applies not only to the common school system, but to the educational institutions of a higher grade. In 1889 the territorial legislature authorized the University of Idaho and located it at the city of

Moscow. This was followed by the establishment of one normal school at Albion, one at Lewiston, an industrial school at St Anthony, an academy at Pocatello and a school for the deaf and blind at Gooding. It is a matter of regret that the university, normal schools and academy were not established in one place and placed under one management. Not only would great expense have been saved, but the institutions would have been far more effective. We have frittered away our means and rendered this great educational system far more inefficient than it should be by reason of segregating and placing them under different management. When these institutions were first located the fitness of the place selected for the institution, the good of the students who were to be benefited, the future welfare of the State and the amount of expenditures which would be entailed in the succeeding years seem to have cut but little figure. Political exigencies had more to do with the location of these institutions than any other reason, and in some instances were the controlling cause. Instead of having one great institution of learning situated in a locality convenient for the entire population of the State, and with subordinate institutions under the same management, and situated in the same locality, we have these widely separated institutions under separate management, some in improper and remote localities, and as a result the cause of education has suffered, the educational interests of the State have been hampered and vast sums of money unnecessarily expended.

It is useless, however, to repine by reason of actions long since done and which it is too late to rectify. Announcements of theories that should have been adopted do not help us meet the conditions that now exist. The evils of this system have been fastened upon us. It may be a question in the minds of many of our people whether it would not be best to abandon all of these separate institutions, pocket the loss sustained by reason thereof, and concentrate our educational institutions under one management in some convenient locality and prepare to build up a university with its necessary adjuncts, that in the future would be a credit to Idaho; but in my judgment this would be unwise and would entail a vast expenditure which we cannot now afford, and compel the State to lose

practically all of the money heretofore invested. Having established them, having fixed the localities and made the appropriations so far expended, it now becomes our duty, as I understand that duty, to make each and every of the institutions as effective as possible under the circumstances, and as far as our financial condition will admit we should endeavor to overcome the disadvantages entailed upon them in the past and diligently endeavor to make them, and each of them, effective for the future.

The reports of various boards of control of the educational institutions mentioned will be brought before you. I have had but slight opportunity for the examination of these reports by reason of their not being printed in sufficient time to allow full consideration of their contents.

The State University.

Whatever criticism has been or may be directed against the location of the university or its accomplishments in the past should be laid aside, and the legislature make a determined effort to place this institution where it should be, the capstone of our educational system and the greatest factor in the training of the young men and the young women of the state. Any effort towards its dismemberment or the establishment of a rival institution should be discouraged and suppressed. It should be forever removed from the field of partisan or political activities, and all should work earnestly for its success.

The university is not only the crown of the State's educational system, but is capable of being made a great factor in the material development of the State. The College of Agriculture, the College of Mines, of Engineering, of Forestry and of Law, each within their respective spheres, are capable of accomplishing more for the development of the resources and industries of the State than any other single factor, and should each be given due consideration by the legislature.

The report of the board of regents will be presented to you, and from this you will see that many betterments are badly needed, and a commensurate appropriation must be made if the present high standard is to be maintained.

The extension of the influence of the university throughout the State with the object of making it of the

greatest benefit to all our people, should be given due consideration. This is particularly important in the agricultural field. Experimental sub-stations, movable schools of agriculture, demonstration trains, farmers' institutes and similar developments of the extension idea, should be provided for. The college of agriculture is already doing good work along these lines, and is capable of doing much more. The other professional colleges of the university can do much along similar lines in their respective fields, but their work is principally done at the university itself. A short course for mining prospectors has been established by the college of mines. The forestry department has already done much towards making known the timber resources of the state. The engineering department could be utilized for topographical and geodetic surveys. The college of law has a broad field for practical usefulness. No backward step should be taken in these matters.

Rural High Schools.

The ninth session of the legislature provided for a system of rural high schools, and, in my judgment, showed wisdom in its efforts to establish these educational institutions. It is to be hoped these schools will soon be established in all of the counties of the state where conditions permit. The consolidation of a number of school districts for this purpose makes it possible to give the same opportunity to our youth residing in the rural districts that is given in our larger towns and cities. Between the district school and the state institutions there is a wide gap that can only be bridged by the rural high school. It is in effect the poor man's college, and every effort should be made to foster the system and to assist its practical workings. We have heretofore, by the establishment of our state institutions of learning, stamped the seal of our approval upon a system which, although it may have been wrong in its inception, we are bound to carry on. While thus continuing to provide for the higher education of our youth, and especially those whose circumstances will permit them to attend our state institutions from a distance, we should bear in mind that not ten per cent of the youth raised and educated in the rural districts

ever pass from the eighth grade of the district school and enter the academy, the normal schools or the state university. Their only opportunity to perfect their education is by means of the rural high school. In view of the present financial condition of the state, I do not feel justified in urging that which appeals to me as a correct governmental policy in this regard, and ask for assistance at the present time for the establishment and betterment of these rural high schools, but any efforts on the part of the legislature to facilitate both their establishment and proper maintenance will meet with my approval and hearty co-operation.

Our District Courts.

The constitution of our State as originally adopted divided the State into five judicial districts, power being given the legislature to increase the number of districts as exigencies demanded. At the time of its adoption we had a population of about 86,000, which has since increased nearly four-fold, while the number of judicial districts in the State has only increased to eight. The increase in important litigation has been in greater ratio than our increase in population, and the character of our litigation assumes greater importance as the State grows older. It necessarily follows that our district courts are flooded with business and our district judges are overworked to such an extent as to seriously impair their usefulness and efficiency. It is impossible to carry on the litigation of the State with the district courts constituted as they now are. To attempt to do so would probably result in losing the services of some of our ablest judges. That more district judges are needed to carry on the business of the State admits of no contradiction. How best provide for the increase in the number? It was once thought a proper remedy by the election of a district judge for each county. I never have, nor do I now believe, that this is a practicable solution of the difficulty. To increase the number of judicial districts as the litigation increases is not altogether satisfactory. The volume of litigation in the several counties is an uncertain quality, and it is hard to tell how many new counties will be organized in the future or when such organization will be effected. To relieve

this strain I would suggest a new departure in our methods. Section 1 of Article 5 of the constitution provides that "the Legislature may reduce or increase the number of districts, district judges and district attorneys." This provision not only enables the Legislature to increase the number of judicial districts, but also the number of district judges. I believe, under this provision of the constitution, two or more judges could be elected in any judicial district if the Legislature should choose to enact a statute to that effect. Two judges in each district would enable courts to be held contemporaneously in two counties in the district, or the judges could each hold court in the same county at the same time. The increase of expense would not under this system be proportionate to the increase in judges, and great saving could thus be made to the state and to the counties. Under the law as it now stands, a district judge can be assigned to another district to hold a certain term of court. Section 12 of Article 5 of the constitution already provides for this. Under the system proposed one of the judges in a particular district, whenever the business of such district would permit, would be assigned to another district where the business was overcrowded. As the constitution provides two terms of court at least shall be held in each county, the creation of new districts would lessen the opportunity of transferring a judge to another district without interfering with the terms of court in his own. Difficulties might arise on rare occasions as to the particular duties of the dual judges, but this can be easily provided for.

If this suggestion meets the approval of the legislature, I would advise an act be passed increasing the number of judges to be elected in the second, third and fourth judicial districts to two each, because the first two districts named are not only overcrowded with business, but they also embrace the cities in which our Supreme Court meets, and, under the constitutional amendment just adopted by the people, the Supreme Court is authorized to call in a district judge whenever a justice of that court is disqualified or unable by reason of illness or absence to act. It would not embarrass the cause of justice in either of such districts if the Supreme Court should see fit to call on one of the judges to sit as part of such court.

I most earnestly advocate the enactment of the above suggestions into a statute which will take effect immediately after its approval, and believe it presents such an effective remedy that it will cure all the evils of our present system.

Should these suggestions not meet with your approval, some other action should be taken, as a contingency confronts us that must immediately be met. One of the counties of the Sixth or Seventh Judicial Districts should be added to the Fourth District and a new district created. I advise immediate action in this regard, as the stress of business in the several counties of the district has been such during the past year that one of the most effective and satisfactory judges who has ever graced the bench in Idaho has, by his earnest efforts to carry on the business of the district, so impaired his health that for a time it was feared the State would be deprived of his valued services. The small salary attached to our judicial offices cause their acceptance more for the honor attached to such position than by reason of the salary paid. Any of our judges could in private practice double the amount of his present salary. . We may continue to underpay our judges, but we should not in addition overwork them. This is not the only district where relief is necessary, as there is a press of litigation rendering assistance indispensable in other districts, although, perhaps not in such marked degree. One new district in the northern and one in the southeastern part of the State should be created in addition to the district above referred to in the event you do not favor the proposed suggestions of a dual system.

Non-Partisan Judiciary.

No state has been favored with judges, both in our supreme and district courts, who have been more honest and efficient than Idaho. Both political parties have at each recurring election taken pride in selecting men for these important positions whose election would reflect credit upon the State. While Idaho has been extremely fortunate in this regard, even under the present partisan system, still to preserve this high standard it is advisable to remove the judiciary from partisan politics, otherwise it will be possible for unworthy members of the bar to attain this high distinction, and thus cause the present high

standing of our courts to be lowered and the confidence of our people in the integrity of our judges to be shaken.

I would recommend a constitutional amendment increasing the term of office of district judges and probate judges as well to six years, and providing that all judicial officers should be elected upon a year succeeding a general election, and the provisions of the law in regard to primary elections, so far as the election of judges by political parties is concerned, should be abrogated, and a method devoid as far as possible of political significance should be adopted.

The Supreme Court.

The great and ever-increasing business of the supreme court renders it difficult for three justices to properly handle it. The constitutional provisions permitting district judges to be called upon to specially sit as members of that court will grant some relief but this will be temporary only. The question of increasing the number of justices is one that will necessarily have to be considered soon by the people. I do not suggest any present amendment to the Constitution in the regard, but call it to your attention so that the question of its advisability, and as the number to which the court shall be increased may become a matter of public discussion.

Submission of Doubtful Questions to the Supreme Court by the Legislature.

Very often important questions arise which should, in advance of actual litigation, be passed upon by our highest legal tribunal. The constitution of a number of our states makes it the duty of the supreme court to give its opinion upon important questions when required by the Governor or either house of the legislature, and these opinions carry the same weight as decisions of that tribunal in matters of litigation.

This is a matter of great importance to all of us. During every session of the Legislature measures of doubtful constitutionality are often suggested. This session will not be free from questions of this character. If under our Constitution it is possible to frame a statute conferring this jurisdiction upon the supreme court, I would advise that it be done immediately, and then such statute could be brought to the attention of that court. I doubt the constitutionality of a statute of this kind,

but do not feel at all certain upon the matter. If such a statute was enacted the matter of its constitutionality could readily be determined and, in the event the decision was adverse, there would remain sufficient time for the Legislature to frame a constitutional amendment submitting the question at the next general election. The Attorney General has elaborated upon this idea somewhat in his report, which I recommend to your careful consideration in connection with this suggestion.

Civil Procedure.

The justices of the supreme court, in their communication to the Governor, hereinbefore referred to, have recommended that Section 3894 of the Revised Codes, that section which provides that in case of a vacancy in the office of district judge, or in his absence from the State, motions and orders may be granted by any district judge of the State, be so amended as to authorize the hearing of motions and granting of orders by any judge other than a judge of the district in which the matter arises, in all cases of vacancy in office or absence of the judge from the district or state, or his sickness or inability to act from any cause. This, in my judgment, is a wise suggestion and such amendment should be prepared and acted upon immediately. There is no good reason why, in order to enable another judge to act, the judge of the district wherein the cause is being litigated should be required to be absent from the State; absence from the district or disability of any kind should equally entitle the litigant to the demanded relief.

Separate Trials for Defendants in Criminal Cases.

Under the provisions of Section 7860 of the Revised Codes, in all cases of felony where there is a joint indictment or information filed against two or more defendants such defendants, or either of them, may, as a matter of right, call for a separate trial. Under this provision of the statute, great expense is often unnecessarily entailed upon the county wherein the trial is had and justice is sometimes thwarted. Formerly in this State separate trial, if asked for by defendants jointly indicted, was a matter resting within the sound discretion of the court. I have never known a defendant's rights seriously impaired by reason of such course. I recommend that the old system be reinstated by so amending this section as to leave the question

of separate trials of persons jointly indicted or informed against, not a matter of right but a matter of discretion on the part of the trial judge. The justices of the Supreme Court have come to a similar conclusion, as will be shown by their suggestions to the Governor which are herewith submitted to you.

Commercial Law.

In the field of Commercial Law we should keep abreast of the times. Careful consideration of the effort and productions of the uniform law commission and the American Bar association should be had, and the State should cooperate in adopting the uniform statutes on commercial subjects. The sales act, an admirable product by the best authorities, has already been adopted in several of the leading states. Proposed uniform bills of lading act, corporations act and partnership act and some others have been prepared, but have not yet been adopted by a sufficient number of states to warrant us in assuming they will meet with sufficient general approval to insure uniformity between the states on these important subjects. Such productions are worthy of serious consideration, however, and our State should endeavor to keep well in the ranks of the leading commercial states. These efforts towards statutory uniformity are of great importance in a country of independent jurisdictions such as the United States, and without them the law of the various states would soon produce a bewildering conflict of decisions on subjects which are of general and uniform interest and importance.

Marriage and Property Laws.

The law regulating divorces should require a year's residence as a pre-requisite to suit, instead of six months, as is now required, and the provisions of Section 131, California Civil Code, for an interlocutory decree of divorce, not to become final for six months, should be adopted, instead of our system making a marriage polygamous unless the former marriage has been dissolved for more than six months. This provision, however, might be retained with some alterations so as to apply to foreign divorces granted in states which have no provision for an

interlocutory decree. No appeal should be allowed from the final decree, but an appeal should be granted from the interlocutory decree. These changes in our statutes would prevent this State longer being a mecca for discontented spouses from other states, and render effectual our own divorce laws, which contemplate there shall be no remarriage for six months after decree. To satisfy those of our people having religious scruples against seeking absolute divorce a statute authorizing, as an alternative solution of domestic difficulties, application for a limited divorce or separation, leaving the parties free to afterwards apply for absolute divorce in the event the limited divorce for any reason fails to meet their demands, would be advisable.

The property rights of husband and wife should be further adjusted. The wife should be given full contractual power, but her contracts should bind only her separate property. Section 2677 of the Revised Codes should be amended accordingly, and at the same time Section 2676 and Section 2680, with reference to the wife's separate property and community property, respectively, should be amended so as to empower the wife to acquire separate property by her efforts after marriage, in case she makes contracts or business engagements on her own credit and responsibility. Sections 2681 and 2682, in relation to the inventory of the wife's separate property, should be repealed as obsolete. Sections 3178 and 3179, restricting the wife's right of transfer, should be repealed, leaving her absolutely free to convey her separate property without joinder of her husband. There should also be a provision to the effect that all property of record in the name of a married woman should, for the purpose of transfer, be conclusively presumed, in favor of the transferee, to be her separate property, and such transfer by her should pass title free from any claim of her husband to the property as community or otherwise. In this connection Section 5713, requiring the probate of community property upon the death of the wife should be amended in such a way that while it should adequately protect the wife and her children, in the event of her death, it should also enable the husband to continue business and support his family without the necessity of practically commencing life anew.

As the law is now framed, a husband must, upon the death of the wife, procure probate of the community property and divide that property with his children, unless the wife has left a will vesting the control of the property in him. The majority of people, and especially is it true of women, do not make wills, and to require every husband upon the death of his wife to probate the community property, settle up his business, and account to his minor children for one-half of the property, and placing him under the limitations and responsibilities of guardianship, works an injustice which must occur much more frequently than those instances in which a husband, on the death of his wife, would prove a traitor to her and their children by abandoning them in some new alliance. Legislation of this kind must of necessity be a compromise and must protect all interests. I refrain from urging any specific amendment, but suggest tentatively for your consideration an amendment by which probate and devolution of the community property intestate would be obviated in all cases where the wife had not exercised her right to make a will. Under such a statute as this, the wife would be afforded protection in the event that she thought her husband would be likely to misuse the common property to the detriment of her children or others who might be dependent upon her.

The Primary Election Law.

That the primary election law as passed by the last session is defective and almost inoperative is conceded even by its best friends. The trial that has been given its provisions during the past year will, I apprehend, urge you to amend these provisions. The principle involved is a correct one without doubt. The nomination of candidates should be brought as close as possible to the electors of the different parties, but the method of applying this principle, as defined in the statute in question, is radically wrong in many important features. Especially is this the case when it comes to that particular provision of the law which, under the construction given it by our supreme court, compels the voter at the primary election where more than two candidates are in nomination for any particular office, to vote for both first and second choice for

that particular office, and if he fails in so doing his ballot in that particular is void. I believe a provision authorizing an elector to vote a second choice where there are more than two candidates is a wise one. To compel him, however, to do so will in some cases prevent him from exercising his real choice because the vote for second choice often proves as important as that for first. I would suggest this section be amended by making it optional with the elector to vote for second choice where two or more candidates are in nomination for the same office on his party primary ticket.

I would suggest, unless such plan would raise a constitutional question, that the law be amended by withdrawing the right to nominate by petition. A state-wide petition makes the expenditure of a large amount of money necessary, and it infringes to a certain extent upon the secrecy of the ballot. In my judgment it is better for each candidate to file his nomination papers, pay the required fee and thus submit the matter of nomination to the voters of his party without the opportunity being given him to file his nomination by petition.

Another amendment should be made to the law, a majority vote should not be required where there are more than two candidates running on a ticket for a given office, but a smaller percentage of first choice votes should secure the nomination. I suggest a change in this regard. Similar laws in other states contain such provisions, and I have never heard the efficacy of those laws in that respect questioned.

The amount permitted to be expended by candidates seeking nomination needs amendment. If it is the desire of the legislature to prevent expenditures in order that the electors at the primary election may voice their sentiments without coercion or persuasion of any kind, the present provision of the law could be so amended as to prohibit the expenditure of any money whatever, excepting the amount needed for filing fees and the amount required to be expended in printing and distributing certain specified campaign literature. Under the law of Oregon, campaign literature is published and distributed at the expense of the State. It might be well if it is the desire of the Legislature to prevent any personal persuasion of

electors by candidates before the primary election, to add to the present filing fees a sufficient amount to defray the expenses of publishing and distributing certain named literature, and prohibiting any other expense whatever on the part of the candidate or in his behalf. In mentioning these matters I do not desire to be understood as advocating such course. I am simply suggesting it as an alternative, if the Legislature desires to restrict legitimate expenses at all.

The Capitol Building.

Under the amendment to the constitution adopted at the late election, bonds can be issued for the completion of the capitol building. This is a question of great importance. We need vastly increased facilities for the convenience of our state officers, supreme court and legislature, and the protection of the state property. I believe the authorization to issue sufficient bonds to finish the building as planned would be of infinite benefit to Idaho. Such a building would of itself be an ever-present advertisement of our material resources and our confidence in the future.

If you believe the financial condition of the State will not warrant the expenditure necessary for the entire completion, you should in any event see to it that the main building is promptly finished. This will, as I am informed by those in charge, cost in the neighborhood of \$400,000.

The citizens of the State, by their endorsement of the amendment permitting bonds in excess of the constitutional limit to be issued for finishing the capitol building, showed their appreciation of the importance of its early completion and their willingness to meet the cost of so doing.

State Board of Health.

The state board of health has adopted certain rules and regulations regarding dairies and abattoirs which, to be effective, require enactment into law with penalties attached for violation. And it would also be proper for you to consider the advisability of the creation of the office of state sealer of weights and measures, whose in-

spection fees would lessen the expense of the office, and also provide for a reasonable periodical inspection of all places and establishments where food and food products are prepared. In fact a sanitary code dealing with medical inspection of schools and school children, ventilation and protection against fire in theatres and places of assembly, in so far as the same are matters of state concern, should meet with your careful consideration.

Historical Society of Idaho Pioneers.

That the people of this state take an intense interest in its early history and honor those few of the pioneers who now reside within its borders, has been shown by the action of the legislature, both state and territorial, upon numerous occasions. I am not of those who believe particular credit should be attached to the personality of those who came to the State in its earlier days and braved the dangers and underwent the hardships incident to the life of a pioneer, as these men, whether prompted by a spirit of adventure, or desirous of their own personal profit of advancement, were not impressed in so doing by any feeling of sentiment, or the fact that they were becoming pioneers of what in the future would be a great and growing state. I was one of these, and as one of the oldest pioneers in length of residence, perhaps, I take a keener interest in matters that are past than those whose settlement within our borders is of more recent years. But our early history is not only now a matter of abiding interest to those who were part and parcel of it, but equally so with those who came at a later period, and will probably be of still more interest to those of a later generation born within its borders. As the years roll by, the incidents of our early history, the causes leading up to the settlement of the State, the efforts which have been made to make it one of the great and growing commonwealths of the West, will have still greater significance and be more eagerly sought for than it is at the present time.

The Society of Idaho Pioneers was first organized in Boise City during the winter of 1881. As one of its charter members and a member of its first board of directors, I took great interest in matters pertaining to the society at that time, and that interest has not lessened as time has

gone on. A great work has been accomplished by the society. The Idaho Historical Society is its coadjutor and was first recognized by the State government in 1907. Much valuable data has been collected which may be utilized by the future historians of the State. Many articles have accumulated and been preserved which will be of far greater interest to another generation than they are to this. The amount contributed by the state since the organization of this society has been comparatively small, and especially so when compared with the benefits which have accrued and will accrue from its labors.

The ninth session of the Legislature appropriated \$1,000 annually for the salary of the librarian of the society and \$250 per year for other expenses. This is inadequate. I suggest the salary be raised to at least \$1,500 per annum and the amount given for other expenses be doubled.

Natural History Collection.

The State of Idaho has never provided for a natural history collection. This is something that we of this generation do not fully appreciate, but if we do not provide for it, future generations will greatly regret our unwise action. The wild animals and birds formerly existing in such great numbers within the boundaries of our state are rapidly becoming extinct. If specimens of these were properly mounted, preserved and placed under the charge of some department of the State government, it would be a source of delight to our citizens, to all visitors as well, and a subject of interest to students of natural history. Many of our sister states of the west have such a collection, and I see no reason why proper measures should not be taken for us to adopt a similar course. A part at least of our capital building will soon be completed and one room could readily be devoted to this purpose. It would not require a special guardian to protect this collection, as it could be placed under the management of the Historical Society without any additional expense. The only cost that would be incurred would be the proper preservation and mounting of the various specimens. The specimens themselves would, I believe, be furnished without cost by citizens desirous of identifying themselves with such a collection, and the cost of mounting and preserving would be comparatively light. A small appropriation would suffice for this purpose. If this idea meets with

your approbation, I would suggest that two or more of the state officers be appointed to act in conjunction with the historian of that society as commissioners for the purpose of settling any disputed points that might arise, and determining what particular specimens should be received and cared for and the amount to be paid out for services in this connection.

Employers' Liability Act.

The last Legislature passed an employers' liability law which in my judgment is absolutely ineffective. The only change as I view it that has been made in the system theretofore prevailing in this State was to limit the amount that could be collected by reason of an accident resulting in death. Such action should be taken at this coming session to amend this law so as to make it conform to the laws enacted during the past decade by the legislatures of most of the states of the Union, and to give proper protection to the employees engaged in all branches of labor. Similar measures passed in the majority of the states have been conducive of great good and have worked no real disadvantage to the employers of labor.

The Sixteenth Amendment to the Constitution of the United States.

The congress of the United States on July 5, 1909, adopted a joint resolution proposing an amendment to the Federal Constitution conferring on congress the power to tax incomes whenever the needs of the country should so require. This amendment has already been ratified by the legislatures of eight states and rejected by two. It will necessarily come before the legislatures of many other states than ours this winter and you should take action in the matter, and register the vote of this state in favor of the amendment.

Non-Intoxicating Beverages.

By Section 1521 of the Revised Codes it is made unlawful to sell or dispose of any intoxicating, vinous or malt liquors without first having obtained a retail liquor license therefor. The Supreme Court of our state was called upon, in the case of *State vs. Lockman*, to pass upon this question in August last, and after full consideration, by this decision announced

in effect that under this statute the question of vinous or malt liquors being intoxicating was not a matter of proof before the court trying the case, but that the statute itself classed all compounds of this kind as intoxicating, without reference to the fact of their containing any alcohol, or containing it in such small quantities as would not induce intoxication. Under the provisions of this act, harmless articles in every day use and which under no circumstances would induce intoxication are prohibited from sale unless a retail liquor license is first taken out. Grape juice and similar compounds are, as I understand the decision, included in this list. It is evident to me that the intention of the Legislature in passing the statute was to insist upon a retail liquor license for all liquors or vinous or malt compounds that were liable to produce intoxication, but did not intend to include non-intoxicants. If such is the case, and a reading of the statute will, I believe, convince any person that it was so intended, it would only be a matter of right to amend the law so as to prohibit the sale of any liquor or vinous or malt compound that would produce intoxication in any degree, but not to bar the sale of non-intoxicating drinks because they might be classed as vinous or malt compounds.

Regulation of Saloons

In all places where retail liquor dealers are licensed, the business should be conducted under strict and always enforced regulations. The method of conducting business on the part of some of those engaged in this traffic has done much to engender a feeling of hostility towards this business in many places in the state. Under the existing laws the boards of county commissioners are given authority to revoke liquor licenses after the licensee has been convicted of running a disorderly house, or selling liquor to minors. It would do much to avoid these evils if the provisions of the statute referred to were made mandatory and the judgment of conviction itself revoke the license.

The Game Law.

The game laws of the state may require amendment in other particulars, but in one respect they certainly should be changed. Our statutes contain fully as much restrictive game legislation as most of the other western states, as killing of

buffalo, moose, antelope, beaver and caribou are now prohibited during any time of the year. This is a wise and salutary provision, and the course of the past in this regard should be pursued in the future, but in addition to the animals already protected should be added elk and perhaps mountain sheep and mountain goats. The noblest animal that ranged our prairies and our valleys in the days before settlement decreased our game supply was the elk. As settlements have increased, this noble animal has been driven from its usual haunts and is now found but in few localities. The Yellowstone Park, adjoining our eastern boundary, is at present the summer resort of these animals, and, as the government fully protects them there, their habits have materially changed and their natural timidity to a great extent is lost by reason of the protection afforded them. This, together with the ever-increasing army of hunters bound on their destruction, and the great improvement made in firearms in recent years, has made their destruction comparatively easy, and will result in their extinction in a few years more. I most earnestly suggest that the killing of elk within the State be absolutely prohibited for a stated number of years and that severe penalties be attached to the violation of the proposed statute in this regard. Many reasons could be urged in favor of a similar statute protecting the mountain sheep and mountain goats. These animals are becoming comparatively scarce, and they are no longer a source of food supply in any portion of the State. By placing them also on the forbidden list there would soon be a great increase in their number and it would then become proper to permit them to be hunted for a limited time each year with strict limitations as to the number any one person should be allowed to kill.

The Grain Commission.

Under the grain commission law as it now exists, the commissioner has presented his report which will be placed before you, and I commend the suggestions it contains to your careful consideration. This is an important department of our state government and everything promoting its efficiency should be done.

The Sunday Rest Law.

The ninth session of the State Legislature enacted what is

generally known as the Sunday Rest Law. This statute is incorporated in the Revised Statutes, Sections 6823 to 6827. While perhaps a worthy object was sought to be attained by its passage, the provisions of the act itself are in many respects both absurd and contradictory, and the matter has twice been before the supreme court, requiring the construction at the hands of that tribunal, while many other of its provisions still remain in grave doubt. An examination and careful analysis of the things prohibited will, I think, convince any reasoning man of the necessity of a change in its provisions. It is hard for an ordinary citizen to give a reason why candies and cigars should be sold on Sunday and the sale of bread prohibited; why places of amusement like that carried on at the Natatorium grounds in this city should be permitted to run while it is made unlawful to use merry-go-rounds or similar methods of diversion; why baseball games can be legally played and billiards and pool made unlawful. It is equally incomprehensible why non-intoxicating drinks can be sold in places devoted to that purpose, while boot-black stands and other necessary conveniences should be prohibited. This list could be extended indefinitely. The reason for many of these prohibitions are simply incomprehensible to the average mind.

Personally I do not believe it proper to legislate upon matters of this kind. Conditions vary in different sections of the State. What would be offensive in one locality to a majority of the people would in other places be innocent and almost necessary recreation. The closing of business places on Sunday might meet universal approval in one place, and still would work a great hardship upon the entire community in other places, especially so in mining districts. In matters of this kind public sentiment generally controls the action of the parties doing business, and if public sentiment is not sufficient to control such actions and cause a cessation of particular kinds of business on Sunday, then the local authorities of each town and city should have control of the matter, and by proper ordinance prohibit those things offensive to a majority of the citizens of such particular locality. No law universal in its application can be enacted that will be satisfactory to the varying conditions of this State.

As a result of its experience in construing this law, the Supreme Court has proposed in its report to the Governor that it be so amended as to make it intelligible. Undoubtedly the

act needs amendment if it is continued in force, but I would suggest as a still better remedy that the entire act be repealed and the subject matter of it relegated to local authorities in the various municipalities of the State.

The Initiative, Referendum and Recall.

Direct legislation has been the subject of agitation in many of the states of the Union for the past decade, and has been formulated into statutory and constitutional provisions in a number of states. I think that I can correctly say that in none of the states wherein the principle has been applied to governmental matters, has there been any disposition on the part of the people to change it or any dissatisfaction with results attained. Conservative as I am in so far as radical changes in our governmental system are concerned, I cannot conceive after full deliberation any tangible reason for opposing direct legislation. The powers of all governing bodies in this country are based upon the consent of those who are governed, and if in extreme cases the power to decide whether any given principle shall be formulated into a statute governing the people of the State, is exercised by the people themselves, it is simply restoring that delegated authority into the hands of those by whom it was delegated. I suggest that this matter be submitted to the people in the form of an amendment to the Constitution to be voted upon at the next general election. It might be advisable, either by the terms of such proposed constitutional amendment, or by giving authority to the Legislature to enact a statute to that effect, to restrict the measures to be either initiated or referred to the more important subjects, and it would be well to carefully consider the percentage of voters who should be required to assent to the initiation of proposed legislation.

The principle of recall of officers who have been negligent in official duties, or have violated their official obligations, is one that goes hand in hand with the initiative and referendum. I cannot see any objection to the exercise of this power by the people except perhaps that our terms of office are so short in this State that it would render such right of but slight importance. However that may be, the principle involved, in my opinion, is a correct one and I suggest that the recall be submitted also to the people as a part of the constitutional

amendment above referred to, or as a separate proposed amendment.

The National Guard.

It is our duty to bring the National Guard to the highest point of efficiency consistent with a reasonable expenditure for its needs. I invite your particular attention to the report of the Adjutant General for the past two years. That officer has endeavored to cure one of the great evils hitherto attendant upon this branch of the public service by putting in operation a more perfect system of accountability for property belonging to the State, and his efforts in this direction are worthy of commendation and will undoubtedly be extended and perfected by his successor. I commend to the committees of the two houses whose special duty it will be to inquire into these matters, careful consideration of his report and the suggestions offered by him for the betterment of the service.

The Penitentiary.

There will be submitted to you a report in regard to the condition of the state penitentiary near Boise City. I commend this report to your careful consideration.

Provision certainly should be made for the employment of the convicts. The institution should be made as nearly self-supporting as possible. We cannot under the terms of the Constitution work the convicts except upon public works of the State and upon penitentiary grounds, nor if we could would it be proper to put this convict labor in competition with that of our citizens. I suggest to you the propriety of providing for a manufacturing industry that would not conflict with any of the industries carried on in the State, but would enable the labor of the convicts to be profitably employed and thus save much of the expenses entailed by their maintenance.

Another matter worthy of consideration is the establishment of a school within the penitentiary. A large proportion of the convicts are young men who have had but little advantages in the way of education. It strikes me that a school could be established within the penitentiary without any particular expense to the State, using some of the better educated convicts as teachers, which would do much to reform the younger

convicts and better qualify them after their discharge to honestly earn their living.

The Temperance Question.

The last Legislature enacted the local option law, and under it the electors of the several counties may decide as to whether intoxicating liquors can be sold within the county limits. Although the temperance question has been made a political issue to a certain extent, it is, in my judgment, a moral question that should not have found its way into politics. Varying views were and still are entertained by the people of the State upon this great question, but the Legislature having enacted the law in question, I submit its merits or demerits should be fully developed by its practical application before the law should be either amended or repealed. I favor keeping this law intact until a sufficient interval has elapsed to enable our people to determine as to its efficiency, and, therefore, hope that no effort will be made upon your part to interfere with this law by amending it in any particular whatever.

Investigation of State Accounts.

There should in my judgment be an investigation at stated intervals of the accounts of all public officers, conducted by skilled accountants. Even if satisfied that the interests of the State have been fully protected, and that there has been no violation of official duty on the part of the officers, still such investigation should be had in order that the people may be assured of such fact, and because it would give ready opportunity of officers affected to explain any disputed matters and have the benefit of favorable reports as well. I would suggest the appointment of competent accountants, either by joint committee selected by the two houses and authorized to enter into these matters, or by some named officers of the State, and that a thorough investigation and accounting should be had in all departments of the state and the report thereof referred to the Governor, with power to act in such manner as would protect the interests of the State, and with direction to him to submit the report to the next Legislature.

Election of United States Senators.

The favorable report of the sub-committee of the United

States Senate Judiciary Committee upon the submission of the proposed amendment to the Federal Constitution providing for election of United States senators by direct vote of the people is in line with the general progressive movement for the enlargement of the people's control of, their own government, and I would deem it proper for the Legislature to again express to the national congress the practical unanimity of the people of this State in favor of this reform. In the meantime, awaiting the action of Congress, it would be proper for you to favorably consider the Oregon plan for the nomination of senatorial candidates at the primary elections, with the names of those so chosen to be placed upon the official ballot, and the people's choice to be ratified by the Legislature through the voluntary pledge of legislative candidates to abide by the popular decision.

Deposit of State Funds.

I suggest that all banks whenever State funds are deposited should be required to furnish securities as required by Section 129 of the Revised Codes, or Security Company bonds, and no personal bonds be permitted.

I suggest further that the classes of securities deposited by security companies doing business in the State under the provisions of Section 2939, be specially named, by an amendment to that section instead of being left to the discretion of the insurance commissioner.

The State Banking Law.

The bankers of the State are better informed in regard to the practical workings of the present banking law and needed changes in our banking system than any other class of our citizens. The Idaho Bankers' Association at its 1910 session authorized its legislative committee to prepare a new banking law which will be submitted to you and should be carefully considered, and if, in your judgment, the changes suggested will be conducive to the best interests of our people, the proposed law should be adopted.

Conclusion.

The problems presented for your consideration during the

session will be many and difficult and will undoubtedly bring forth your best efforts. The immediate future of the State greatly depends upon your actions. I repeat that our financial condition is such that rigid economy should be observed in all branches of the government, and in all ways consistent with effective service. Our great agricultural, mining, stock-raising and manufacturing industries should be fostered and encouraged, and the business activities of the State should be fully and carefully protected.

In all matters pertaining to the discharge of your duties tending to the betterment of our conditions, and calculated to enhance the future prosperity of our people, you will find in me a willing coadjutor, and my earnest efforts will be directed towards assisting you in the good work.